



October 16, 2018

Via ECF

Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, N.Y. 10007

Re: *Cruz et. al. v. U.S. Dept. of Health and Human Serv. et. al.* 18-CV-06371 (AT)

Dear Judge Torres:

We write on behalf of Plaintiffs to provide the Court with an interim status report regarding this currently stayed matter.

1. **Plaintiff Wilnelia Cruz**

This past weekend, Plaintiff Wilnelia Cruz passed away from complications relating to end-stage liver disease. Ms. Cruz, 38, lived in New York City and was the mother of two children. She contracted Hepatitis C as an infant from a blood transfusion she received in her native Puerto Rico. Ms. Cruz was added to the liver transplant waiting list in January 2017. Ms. Cruz's death is particularly tragic because she had a MELD score that could have gotten her transplanted in many places in the United States. She is the unfortunate victim of a system that wrongly prioritizes where a person lives or whether they have the financial resources to travel over legitimate medical need.

Given that there remain other suitable plaintiffs in this action, Plaintiffs will deal with any amendment or Rule 25 substitution of parties following the December 21, 2018 status report.

2. **OPTN/UNOS Liver and Intestine Transplantation Committee**

On October 8, 2018, the OPTN/UNOS Liver and Intestine Transplantation Committee published a policy proposal on how to bring the OPTN liver policy into compliance with the law. The Committee proposed a new policy called "Broader 2-Circle" that makes cosmetic changes to the revised policy proposed in December 2017, which HHS previously recognized as not complying with the law. The Broader 2-Circle



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proposal remains geography based and prioritizes a patient with a MELD score of 16 (a three month mortality risk of 10% or less) over a patient with a MELD score of 31 (over 50% three month mortality risk) that lives a mere twenty or thirty miles away.¹

The Committee also modeled a more promising policy, based on “acuity circles,” which if properly implemented can lead to meaningful change and bring OPTN policy into compliance with the law. We will continue to monitor the ongoing policy development in advance of the OPTN Board of Director meeting in December 2018.

Consistent with this Court’s August 10, 2018 Order, we will file a joint status report by no later than December 21, 2018.

Respectfully submitted,

s/Motty Shulman

Motty Shulman

cc: Counsel of Record via ECF

¹¹ For example, a liver that becomes available in Carthage, TX would go to a patient in Dallas, TX with a MELD score of 16 before it went to a patient in Houston, TX with a MELD score of 31.